

13 Official Opinions of the Compliance Board 18 (2019)

- ◆ **6(B)(1) Minutes – Generally. Posting on website required, to the extent practicable. (No Violation)**
- ◆ **7(B) Guidance – Complaint. Complaint process should not be used for conduct of public body that the Compliance Board has already addressed.**
- ◆ **Violations. None**

*Topic numbers and headings correspond to those in the Opinions Index posted on the Open Meetings webpage at www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx.

April 19, 2019

Re: Queen Anne’s County Housing Authority

The complaint alleges that the Housing Authority of Queen Anne’s County violated the Open Meetings Act in various ways. The Authority’s counsel responded on its behalf.

- 1. Allegations regarding § 3-306(e),¹ which requires public bodies to post their minutes online “to the extent practicable”*

The complainant argues that the “plain language of the Act . . . requires posting minutes online.” He then asserts that the Authority violates the Act because “there are no minutes posted online, as required after 10/1/2017.”

The allegation misreads § 3-306(e), which only requires public bodies to post their minutes online “to the extent practicable.” In enacting the provision, the General Assembly implicitly recognized that not every board, commission, and task force throughout the State either serves a community with access to the internet or has the resources to create and maintain a website. Indeed, nothing in the Act requires public bodies even to have a website. Section 3-306(e) thus does not “require” a public body to post its minutes online, much less than impose an absolute mandate that every public body prioritize that task over the work that it was created to do. In short, the absence of minutes, or a particular set of minutes, on a public body’s website does not by itself mean that the public body violated § 3-306(e).

Nonetheless, if and when it is practicable for a public body to post minutes online, it must provide the public with that convenience. Additionally, a member of the public who needs to see minutes may visit the public body’s office and ask to inspect them or may submit a request for them under the Public Information Act. *See* § 3-306(d) (requiring public bodies to make minutes available for inspection upon request); 9 *OMCB Opinions* 218, 219-220 (2015) (explaining the availability of open-session minutes under the Public Information Act).

¹ Statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014, 2018 supp.).

The question before us is thus the extent to which it has been “practicable” for the Authority to post its minutes online. Although we have not squarely interpreted the term in the context of § 3-306(e), we have often applied it in the context of § 3-306(b), which requires public bodies to prepare minutes “as soon as practicable” after they meet. In 8 *OMCB Opinions* 150, 159 (2013), for example, we explained that § 3-306(b) “requires us to strike a balance between, on the one hand, the goal of promptly informing members of the public who cannot attend a meeting of the events that occurred there, and, on the other, the practical constraints faced by the public body that must prepare and adopt the minutes.” For § 3-306(e), the balance is different; as noted above, the public has access to the minutes by other methods. Therefore, the balance that we strike here is between, on the one hand, the goal of providing seamless access to those members of the public who have access to the internet and, on the other, the practical constraints on the particular public body’s ability to do so. In any event, the inquiry is fact-dependent.

Sometimes, the facts on the practicability (or impracticability) of a particular public body’s posting of minutes are so clear that we can pronounce a violation (or lack of violation). In 13 *OMCB Opinions* 1 (2019), for example, we found that it would have been practicable for a county’s revenue authority to post its minutes on the county’s website; the revenue authority and other county public bodies posted meeting notices there, and other county public bodies also posted their minutes. The revenue authority did not explain why it would be impracticable for it to do so, too. The case before us is different. The Authority’s response explains that the Authority (which is not a county entity) uses its cash reserves to meet its mandate to “provide clean, safe and affordable housing to low-income residents of Queen Anne’s County,” that the county has not provided it with supplemental funding that might enable it to update its current website to make posting minutes practicable in their current format, that spending money on such a capability would require it to divert resources from maintaining its housing, and that the Authority is working with the county to see if the county can post its meeting materials on the county’s website. The Authority also explains that posting information on a website is not an effective way to reach the members of its interested public because many of its tenants lack access to the internet. We are not in a position either to evaluate the Authority’s staffing and software or to determine that, in light of other mandates imposed on the Authority, the Authority violated the Act by not prioritizing this one.

We find that the Authority did not violate § 3-306(e). At the same time, we encourage the Authority in its efforts to have the county post the Authority’s minutes on the county’s website.

2. *Allegations regarding § 3-305(c) and (d), regarding closed-session disclosures, and allegations not involving the Open Meetings Act*

The complaint alleges that the Authority’s disclosures for meetings it closed in February and June 2018 did not contain all of the information required by § 3-305(c) and (d). We addressed the June 2018 disclosures in 12 *OMCB Opinions* 108 (2018), found them insufficient, and advised the Authority on how to meet these requirements. The complainant acknowledges that we issued the opinion. We will not address allegations about earlier instances of practices that we have already addressed. *See, e.g.*, 9 *OMCB Opinions* 304, 305 (2015) (noting that “complaints necessitate the expenditure of public resources” and advising that complaints about conduct already addressed by

the Board “seldom result in a benefit to the public.”). We also will not address the allegations that do not state a violation of the Act, as they lie beyond our authority. *See, e.g., 9 OMCB Opinions* at 220 (declining to address this complainant’s allegations about the Public Information Act); *7 OMCB Opinions* 30, 32 (2010) (same).

Conclusion

The submissions do not establish a violation of § 3-306(e). We did not address the other allegations, which involve either practices that we have already addressed in a recent opinion or pertain to laws other than the Open Meetings Act.

Open Meetings Compliance Board

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